



01 MAY 2006

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Huntsman LLC
Legal Department
10003 Woodloch Forest Drive
The Woodlands, TX 77380

In re Application of MESSE et al :
U.S. Application No.: 10/516,978 :
PCT Application No.: PCT/GB03/02410 :
Int. Filing Date: 04 June 2003 : DECISION
Priority Date Claimed: 06 June 2002 :
Attorney Docket No.: 128905-1004 (HAM 830006) :
For: ACTINIC RADIATION CURABLE :
COMPOSITIONS AND THEIR USE :

This is in response to applicant's "Renewed Petition Under 37 C.F.R 1.47(a)" filed 04 April 2006.

BACKGROUND

On 04 June 2003, applicant filed international application PCT/GB03/02410, which claimed priority of an earlier United Kingdom application filed 06 June 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 18 December 2003. The thirty-month period for paying the basic national fee in the United States expired on 06 December 2004.

On 03 December 2004, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 17 June 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 22 August 2005, applicant filed a petition under 37 CFR 1.47(a).

On 31 January 2006, this Office mailed a decision dismissing the 22 August 2005 petition.

On 04 April 2006, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Applicant has previously satisfied items (1) and (3) above.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

The petition states that joint inventor Barrie Hayes refuses to sign the application papers. Petitioner has adequately demonstrated that a bona fide attempt was made to present a copy of the application papers to Hayes for signature. In particular, the application papers were delivered to Hayes 16 February 2006 (see affidavit of Sandra Bauwens, ¶7). Furthermore, the petition sufficiently illustrates that Hayes refuses to sign. Specifically, the Bauwens' affidavit states that Hayes made a constructive refusal to sign during a telephone conversation on 21 March 2006 (see Bauwens' affidavit, ¶9). Thus, it can be concluded with reasonable certainty that Hayes refuses to join in the application.

With regard to item (4) above, the petition states the last known address of the nonsigning inventor.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 04 June 2003, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 22 August 2005.

As set forth in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at the last known address of record and will be published in the *Official Gazette*.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 571-272-3303

Facsimile: 571-273-0459



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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Barrie Hayes
Westlands
33 High Street, Eversdan
Cambridgeshire CB3 7HE
Great Britain

In re Application of MESSE et al
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PCT Application No.: PCT/GB03/02410
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For: ACTINIC RADIATION CURABLE
COMPOSITIONS AND THEIR USE

Dear Barrie Hayes:

You are named as a joint inventor in the above-captioned United States national stage application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost set forth in 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you choose to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Bryan Tung
PCT Legal Examiner
PCT Legal Office
Telephone: 571-272-3303
Facsimile: 571-273-0459

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